

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

FARIS NISSAN,

Plaintiff,

vs.

No. 2011-cv-13047
Hon. Paul D. Borman

STATE FARM FIRE AND CASUALTY
INSURANCE COMPANY,

Defendant.

JURY INSTRUCTIONS

Case No. 2011-cv-13047

**FAITHFUL PERFORMANCE OF DUTIES;
JURY TO FOLLOW INSTRUCTIONS**

Members of the jury, the evidence and arguments in this case have been completed and I will now instruct you as to the law. That is, I will explain the law that applies to this case.

Faithful performance by you of your duties is vital to the administration of justice.

The law you are to apply in this case is contained in these instructions, and it is your duty to follow them. In other words, you must take the law as I give it to you. You must consider them as a whole and not pick out one or some instructions and disregard others.

Following my instructions you will go to the jury room and deliberate and decide on your verdict.

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FACTS TO BE DETERMINED FROM EVIDENCE

It is your duty to determine the facts from evidence received in open court. You are to apply the law to the facts and in this way decide the case. Sympathy must not influence your decision. Nor should your decision be influenced by prejudice regarding race, sex, religion, national origin, age, handicap, or any other factor irrelevant to the rights of the parties.

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ADMISSION OF EVIDENCE

The evidence you are to consider consists of testimony of witnesses and exhibits offered and received. The admission of evidence in court is governed by rules of law. From time to time it has been my duty as judge to rule on the admissibility of evidence. You must not concern yourselves with the reasons for these rulings, and you must not consider any exhibit to which an objection was sustained or any testimony or exhibit which was ordered stricken.

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CONSIDERATION OF DEPOSITION EVIDENCE

During the trial, certain evidence was presented to you by the reading and viewing of depositions. A deposition is a record of the sworn testimony of parties or witnesses taken before an authorized person. All parties and their attorneys had the right to be present and to examine and cross-examine the witnesses.

This evidence is entitled to the same consideration as you would give the same testimony had the witness testified in open court.

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**ATTORNEYS' STATEMENTS NOT EVIDENCE;
ADMISSION BY ATTORNEY**

The lawyers' statements and arguments are not evidence. They are only meant to help you understand the evidence and each side's legal theories. The lawyers' questions to witnesses are also not evidence. You should consider these questions only as they give meaning to the witnesses' answers. You should only accept things the lawyers say that are supported by the evidence or by your own common sense and general knowledge.

However, an admission of a fact by a lawyer is binding on his client.

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CORPORATIONS ENTITLED TO UNPREJUDICED TREATMENT

State Farm, the Defendant in this case, is entitled to the same fair and unprejudiced treatment as an individual would be under like circumstances, and it is your duty to decide the case with the same impartiality you would use in deciding a case between individuals.

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JUDGE'S OPINION AS TO FACTS IS TO BE DISREGARDED

My comments, rulings, questions, and instructions are also not evidence. It is my duty to see that the trial is conducted according to the law, and to tell you the law that applies to this case. However, when I make a comment or give an instruction, I am not trying to influence your vote or express a personal opinion about the case. If you believe that I have an opinion about how you should decide this case, you must pay no attention to that opinion. You are the only judges of the facts, and you should decide this case from the evidence.

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JURY TO CONSIDER ALL THE EVIDENCE

In determining whether any fact has been proved, you shall consider all of the evidence bearing on that fact without regard to which party produced the evidence.

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CIRCUMSTANTIAL EVIDENCE

Facts can be proved by direct evidence from a witness or an exhibit. Direct evidence is evidence about what we actually see or hear. For example, if you look outside and see rain falling, that is direct evidence that it is raining.

Facts can also be proved by indirect or circumstantial evidence. Circumstantial evidence is evidence that normally or reasonably leads to other facts. So, for example, if you see a person come in from outside wearing a raincoat covered with small drops of water, that would be circumstantial evidence that it is raining.

Circumstantial evidence by itself, or a combination of circumstantial evidence and direct evidence, can be used to prove or disprove a proposition. You must consider all the evidence, both direct and circumstantial.

Mere speculation or conjecture or guesses are not evidence and do not prove anything and should be disregarded.

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**JURORS MAY TAKE INTO ACCOUNT ORDINARY
EXPERIENCE AND OBSERVATIONS**

You have a right to consider all the evidence in the light of your own general knowledge and experience in the affairs of life, and to take into account whether any particular evidence seems reasonable and probable. However, if you have personal knowledge of any particular fact in this case such knowledge may not be used as evidence.

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PRIOR INCONSISTENT STATEMENT OF WITNESSES

If you decide that a witness said something earlier that is not consistent with what the witness said in court, you may consider the earlier statement in deciding whether to believe the witness, but you may not consider it as proof of the facts in this case.

However there are exceptions. You may consider any earlier statement as proof of the facts in this case if:

- a. the statement was made by the Plaintiff, or by an agent or employee of either party; or
- b. the statement was given under oath subject to the penalty of perjury at a trial, hearing, examination under oath or in a deposition; or
- c. the witness testified during the trial that the earlier statement was true.

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CREDIBILITY OF WITNESSES

You are the judges of the facts in this case, and you must determine which witnesses to believe and what weight to give to their testimony. In doing so you may consider each witness's ability and opportunity to observe, his or her memory, manner while testifying, any interest, bias or prejudice, and the reasonableness of the testimony considered in the light of all the evidence.

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WEIGHING CONFLICTING EVIDENCE - NUMBER OF WITNESSES

Although you may consider the number of witnesses testifying on one side or the other when you weigh the evidence as to a particular fact, the number of witnesses alone should not persuade you if the testimony of the lesser number of witnesses is more convincing.

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DEFINITIONS INTRODUCED

I shall now give you the definitions of some important legal terms. Please listen carefully to these definitions so that you will understand the terms when they are used later.

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DEFINITION OF BURDEN OF PROOF

The defendant has the burden of proof to establish its intentional act defense.

For the defendant to satisfy this burden, the evidence must persuade you that it is more likely than not that this proposition is true.

You must consider all the evidence regardless of which party produced it.

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INSURER'S DUTY TO INVESTIGATE

Before deciding whether to honor a claim for insurance benefits, an insurance company has both the duty and the right to conduct a good faith investigation into the claim. An insurer is entitled to possess itself of all knowledge, and all information as to other sources and means of knowledge, in regard to the facts material to its rights, to enable the insurance company to decide upon its obligations, and to protect itself against false claims.

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INTENTIONAL ACT DEFENSE

Members of the jury, State Farm has asserted in this case that the fire which occurred at the property located at 19339 Exeter, Detroit, Michigan on August 3, 2009 was intentionally set by or at the direction of the Plaintiff, Faris Nissan, or that he knew of and consented to the setting of the fire for the fraudulent purpose of collecting money under the insurance policy issued by State Farm. If State Farm has proven this by a preponderance of the evidence, it is excused from payment under the policy.

The law does not require State Farm to produce an eyewitness to the setting of the fire nor is State Farm required to produce a witness to testify that the Plaintiff had a wrongful connection with the fire.

In determining whether the Plaintiff set or arranged for the setting of the fire or whether he knew of and consented to the setting of the fire as claimed, you may consider every fact and circumstance, including motive and opportunity, which you believe may establish his involvement. You may also consider his conduct and statements and the consistency or inconsistency of those statements and conduct with a connection to the fire.

If you find after consideration of all the evidence, whether it be direct or circumstantial, that State Farm has established, by a preponderance of the evidence, that the Plaintiff, Faris Nissan, set or arranged for the setting of the fire, or that he knew of and consented to the setting of the fire, then your verdict will be in favor of State Farm.

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On the other hand, if you find after consideration of all the evidence, whether it be direct or circumstantial, that State Farm has not established, by a preponderance of the evidence, that the Plaintiff set or arranged for the setting the fire or that he knew of and consented to the setting of the fire, then your verdict will be in favor of the Plaintiff on this question.

I charge you that this proceeding does not in any manner involve a question of punishment for violation of a criminal law. The sole question is whether the Plaintiff is entitled to coverage under the insurance policy sued upon.

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DAMAGES

If you determine that the Plaintiff is entitled to recover under the insurance policy following the rules and instructions I have just given you, the Court will determine the amount of damages. For that reason, it will not be necessary for you to consider the Plaintiff's damages.

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JURY DELIBERATIONS

When you go to the jury room, your deliberations should be conducted in a businesslike manner. You should first select a foreperson. She or he should see to it that the discussion goes forward in an orderly fashion and that each juror has full opportunity to discuss the issues.

When all of you agree upon a verdict, it will be received as your verdict. In your deliberations, you should weigh the evidence with an open mind and consideration for each other's opinions.

If differences of opinion arise, you should discuss them in a spirit of fairness and frankness. You should express not only your opinion but also the facts and reasons upon which you base it.

In the course of your deliberations, do not hesitate to reexamine your own views and change your opinion if you are convinced that it is wrong. However, none of you should surrender your honest conviction as to the weight and effect of the evidence or lack of evidence solely because of the opinion of your fellow jurors or for the mere purpose of returning a verdict.

During your deliberations, and before you reach a verdict, you must not disclose anything about your discussions to others outside the jury room, not even how your voting stands. Therefore, until you reach a verdict, do not disclose that information, even in the courtroom.

During your deliberations you may not communicate with persons outside the jury room (other than the Judge), or seek information by any means, including cellular telephones or other electronic devices.

If you discover a juror has violated my instructions, you should report it to me.